

REMARKS

Claim 17 has been amended to include the limitations of claim 27, namely that the measuring device is a microwave fill level measuring device. Claims 21-27 have accordingly been canceled.

Claim 17 has also been amended to clarify that the clampable member holds the microwave fill level measuring device, is pivoted *relative to the container*, and is clamped to the container after orientation adjustment in order to position the microwave fill level measuring device. The holding, pivoting, and clamping features of the ball-shaped member are all clearly shown in the original drawings and described, for example, on pages 7-8 of the original specification.

The microwave fill level measuring device is illustrated in each of Figs. 2, 3a-3d, and 5a-5b. In addition, Figs. 1a and 1b show a generic measuring device.

A typographic correction has been made to claim 20, and claim 32 has been amended to change “can be” to –adapted to be– and to add a comma for grammatical reasons.

Because each of these changes is formal in nature and/or clearly supported by the original specification and drawings, it is respectfully submitted that they do not involve “new matter.”

Reconsideration of the application is respectfully requested for the following reasons:

1. Rejection of Claims 17, 18, 21, 23-26, 30, and 31 Under 35 USC §102(b) in view of German Patent Publication No. DE 2429495 (Gärtner)

This rejection has been rendered moot by the amendment of claim 17 to include the limitations of claim 27. The Gärtner publication discloses an ultrasonic fill level measuring device rather than a microwave fill level measuring device.

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In addition, it is respectfully submitted that the Gärtner publication fails to disclose or suggest a **ball-shaped** clampable member, much less one that can be used to adjust the orientation of the measuring device, as claimed.

2. Rejection of Claims 19, 20, and 32 Under 35 USC §103(a) in view of German Patent Publication No. DE 2429495 (Gärtner)

This rejection has also been rendered moot by the amendment of claim 17 to include the limitations of claim 27. In addition, as discussed below in connection with the rejection of claim 17, the Gärtner publication not only fails to disclose a microwave fill level measuring device, but also fails to disclose or suggest the claimed orientation mechanism, and in particular the claimed ball-shaped orientation mechanism.

3. Rejection of Claim 22 Under 35 USC §103(a) in view of German Patent Publication No. DE 2429495 (Gärtner) and U.S. Patent No. 5,926,152 (Schneider)

This rejection has been rendered moot by the cancellation of claim 22. In addition, it is respectfully noted that the Pfändler patent, which is commonly assigned with the present application, discloses a tuning-fork limit level measuring device with no orientation adjustment whatsoever.

4. Rejection of Claims 27-29 Under 35 USC §103(a) in view of German Patent Publication No. DE 2429495 (Gärtner) and U.S. Patent No. 5,408,168 (Pfändler)

This rejection, insofar as it may prospectively be applied to amended claim 17, is respectfully traversed not only because of Gärtner's failure to disclose a microwave fill level measuring device, but also on the grounds that the Gärtner publication fails to disclose or suggest a ball-shaped member, as claimed, for adjusting the orientation of any sort of fill level measuring device, and further on the grounds that the Schneider patent (which is commonly assigned with the present application) does not disclose any sort of orientation adjustment mechanism, much less one with a ball-shaped pivotable and clampable member, as claimed.

With respect to the Gärtner publication, it is respectfully submitted that the difference between a ball-shaped member as claimed and a non-ball-shaped member of the type disclosed by the Gärtner publication is a substantive structural difference and not merely a matter of “design choice.” The reason is that the use of a ball-shaped member has the advantage that the measuring device holder can be pivoted to *any* desired orientation, and yet be reliably clamped in that orientation. This is particularly advantageous in the case of a microwave fill device that might be used with different shapes of containers, because the direction of the microwaves transmitted by the device is critical to the fill determination, as illustrated in Figs. 1a and 1b of the present application.

The clampable member 14 of the Gärtner publication actually has a curved bottom surface and a flat top surface, rather than a ball shape, which forces the member to assume a specific orientation dictated by the position of plate 15. While the curved bottom surface of member 14 of Gärtner provides some tolerance between plate 15 and the holder, *i.e.*, a very limited degree of pivoting, the orientation of the holder disclosed in the Gärtner publication cannot be adjusted by pivoting and clamping, as claimed. To the contrary, no matter how much the holder might be pivoted before clamping, after the holder disclosed in the Gärtner publication is clamped, the orientation will always be forced by the engagement of planar surfaces to be the same as that of plate 15. Pivoting the holder does not change the orientation. Only differences in the position of plate 15, for example due to differences in holes 18, will affect the orientation of the measuring device. This is exactly contrary to the claimed invention, which uses a ball-shape to ensure that the fill detector can be positioned in a wide variety of orientations relative to the container.

Because the Gärtner publication and Schneider patent, whether considered individually or in any reasonable combination, fails to disclose or suggest the feature of a ball-shaped member that may be pivoted and clamped at a desired orientation in order to adjust the position of the fill device, it is respectfully submitted that the Gärtner publication and Schneider patent do not

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render obvious the invention of claims 19, 20, and 32, or of claim 17 from which claims 19, 20, and 32 depend.

Having thus overcome each of the rejections made in the Official Action, withdrawal of the rejections and expedited passage of the application to issue is requested.

Respectfully submitted,

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